

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL REINER, M.D.,
Appellant,
vs.
PEJMAN BADY, M.D., AN
INDIVIDUAL; AND P. BADY, LTD AND
MEDICAL SYSTEMS MANAGEMENT,
NEVADA CORPORATIONS,
Respondents.

No. 59314

FILED

NOV 14 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a tort and contract action for failure to serve process. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

As an initial matter, respondents Dr. Pejman Bady and his corporations, P. Bady Ltd. and Medical Systems Management, argue that this appeal should be dismissed because the notice of appeal was prematurely filed before entry of the district court's final judgment. Although the notice of appeal was premature, a written final judgment has since been entered in the district court, and thus, the appeal is now properly before this court. See NRAP 4(a)(6) (providing that when a written judgment is entered by the district court before the dismissal of a premature appeal, the notice of appeal is considered to be filed on the date of and after entry of the judgment).

On appeal, appellant Dr. Michael Reiner challenges the district court's dismissal of the complaint for failure to timely serve process. In particular, he argues that leaving service with Dr. Bady's receptionist was proper because his receptionist had apparent authority to


accept service of process for Dr. Bady.¹ In the underlying proceeding and on appeal, however, Dr. Bady denied that his receptionist had actual authority to accept service of process, and Dr. Reiner did not submit any evidence to contradict Dr. Bady's position. Thus, we conclude that leaving the summons and complaint with Dr. Bady's receptionist does not constitute effective service of process on Dr. Bady or his corporations. See *Foster v. Lewis*, 78 Nev. 330, 333, 372 P.2d 679, 680-81 (1962) ("In the absence of actual specific appointment or authorization, and in the absence of a statute conferring authority, an agency to accept service of process will not be implied."); see also *C.H.A. Venture v. G.C. Wallace Consulting Eng'rs, Inc.*, 106 Nev. 381, 384, 794 P.2d 707, 709 (1990) ("[N]otice is not a substitute for service of process. Personal service or a legally provided substitute must still occur in order to obtain jurisdiction over a party.").

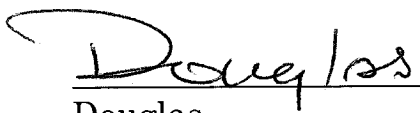
Moreover, under the circumstances presented, the district court did not abuse its discretion by finding that Dr. Reiner had not demonstrated good cause for failing to file a timely motion to extend the service period. See *Saavedra-Sandoval v. Wal-Mart Stores, Inc.* 126 Nev. ___, ___, 245 P.3d 1198, 1200-01 (2010) (explaining that if a timely motion to extend the service period is not made, the party seeking to extend the

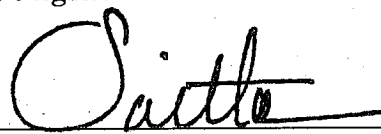
¹Dr. Reiner also argues that NRCP 4(d)(6) does not require service to be "in person to the person served" and that Dr. Bady's statement in his opposition to the motion to enlarge time, that he had received the summons and complaint, constituted proof of service under NRCP 4(g)(4). Because Dr. Reiner did not raise these arguments in the district court, we decline to consider them on appeal. See *Mason v. Cuisenaire*, 122 Nev. 43, 48, 128 P.3d 446, 449 (2006) (explaining that the failure to raise an argument in the district court generally precludes a party from making that argument on appeal).

time for service must first demonstrate good cause for failing to file a timely motion). As a result, we further conclude that, regardless of any prejudice suffered by Dr. Reiner with regard to one of his claims being time-barred, the district court did not abuse its discretion by dismissing the complaint for failure to timely serve process. See NRCP 4(i) (mandating that an action be dismissed if the summons and complaint are not served within 120 days after the complaint is filed and good cause is not demonstrated for the failure to do so); *Saavedra-Sandoval*, 126 Nev. at ___, 245 P.3d at 1200-01. We therefore

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Kimberly A. Wanker, District Judge
E. Paul Richitt, Jr., Settlement Judge
Nancy Lord
Kolesar & Leatham, Chtd.
Nye County Clerk